

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
COUNTY OF WESTCHESTER, NEW YORK)	File No. 0003004004
)	
Request For Waiver Pursuant to Section 337(c) of)	
the Communications Act of 1934, as Amended,)	
and Section 1.925 of the Commission's Rules, to)	
Allow Public Safety Communications on)	
Frequencies Allocated Under Part 22 of the)	
Commission's Rules)	

ORDER

Adopted: November 15, 2007

Released: November 15, 2007

By the Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The County of Westchester, New York (Westchester), filed an application and request for waiver¹ to operate on one frequency pair interleaved between channels allocated for assignment under Part 22 of our rules for paging and radiotelephone services. Specifically, Westchester seeks to use frequency pair 470/473.2000 MHz at three locations: Yonkers, New York; Port Chester, New York; and Valhalla, New York.² For the reasons stated herein, we grant Westchester's waiver request and will process its application accordingly.

II. BACKGROUND

2. Westchester currently operates six channel pairs within the Part 22 Paging and Radiotelephone Service spectrum under call sign WQBR539 at the same three locations listed above.³ The Commission authorized use of Westchester's current channels by waivers granted in 2004 and 2005.⁴ The previous waiver requests filed by Westchester documented the limited amount of spectrum available and the "severe frequency congestion" in the New York and New Jersey areas.⁵ According to the instant waiver request, Westchester asserts that the congestion is "even worse today," and that it "has become

¹ See File No. 0003004004 (filed Apr. 24, 2007, as amended Nov. 2, 2007) (Waiver Request).

² See Waiver Request at 1.

³ Some of Westchester's frequencies are on Part 22 paging frequencies, while Westchester's other frequencies are interleaved between Part 22 paging frequencies. See license for Station WQBR539 and 47 C.F.R. §§ 22.621, 22.651.

⁴ See County of Westchester, *Order*, 20 FCC Rcd 18852 (WTB PSCID 2005) (2005 Order) (granting a modification application for Station WQBR539, Yonkers, New York, pursuant to Section 337(c) of the Act); County of Westchester, *Order*, 19 FCC Rcd 23189 (WTB PSCID 2004) (2004 Order) (granting an application for five Part 22 paging channel pairs pursuant to Section 337(c) of the Act) (collectively, the *Westchester Orders*).

⁵ See Waiver Request at 2 citing *Westchester Orders*.

apparent that additional channels are needed to adequately serve first responders.”⁶ Westchester states that when the new communications system is completed, it expects that first responders will have nearly full coverage anywhere in the county.⁷ Westchester also indicates that, as a result, interoperability between various county and city agencies, as well as with other external governmental bodies will be enhanced.⁸ In lieu of submitting new frequency availability studies, Westchester requests that we incorporate by reference the record developed in the *Westchester Orders*.⁹ Westchester also requests that the proposed new channel pairs be authorized in accordance with the Commission’s decisions in the *Westchester Orders*.¹⁰

3. Westchester provides an interference study purporting to show that use of offset channels is permitted “when no more than five percent interference is caused to the service area [of] any incumbent station within 12.5 kHz of the proposed channel.”¹¹ Westchester notes that the requested channel pairs are offset by 12.5 kHz from the channels identified in Part 22 and claims that Commission grant of the requested offset channels would be consistent with precedent.¹²

4. Although Westchester seeks a waiver of Sections 22.7, 22.501, 22.621, 22.651, 90.303, and 90.311 of the Commission’s rules,¹³ we have determined that at a minimum, Westchester requires a waiver of Sections 22.621 and 22.651,¹⁴ as well as Section 20.9(a)(6) of the Commission’s rules.¹⁵ Westchester seeks a waiver pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act)¹⁶ or, alternatively, Section 1.925 of the Commission’s rules.¹⁷

III. DISCUSSION

5. Section 337(c) of the Act provides that, in connection with an application by an “entity seeking to provide public safety service,” the Commission “shall waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent

⁶ Waiver Request at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* See *infra* note 4.

¹⁰ *Id.*

¹¹ *Id.* at 3. Westchester states that the contour study also demonstrates its compliance with the centralized trunking rules of Section 90.187(b). *Id.*

¹² *Id.* at 3.

¹³ 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.303, 90.311. Westchester also requested waiver of any other Commission rules that are necessary to grant its application. See Waiver Request at 7-8.

¹⁴ Section 22.621 allocates one of the requested frequencies for point-to-multipoint transmitters that support transmitters that provide public mobile service. Section 22.651 allocates the other frequency for assignment to transmitters providing trunked mobile service.

¹⁵ 47 C.F.R. § 20.9(a)(6). Section 20.9(a)(6) states that Part 22 paging and radiotelephone services shall be treated as commercial radio services.

¹⁶ 47 U.S.C. § 337(c).

¹⁷ 47 C.F.R. § 1.925.

necessary to permit the use of unassigned frequencies for the provision of public safety services ...” if the Commission finds that:

- no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;
- the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission’s regulations;
- the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;
- the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and
- granting such application is consistent with the public interest.¹⁸

6. When considering waiver requests filed pursuant to Section 337(c) of the Act, we first determine whether the applicant is an “entity seeking to provide public safety services.”¹⁹ The Act defines public safety services as “services – (A) the sole or principle purpose of which is to protect the safety of life, health, or property; (B) that are provided – (i) by State or local government entities; or (ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.”²⁰ The Wireless Telecommunications Bureau’s former Public Safety and Critical Infrastructure Division (WTB/PSCID) previously concluded that Westchester is an entity that provides public safety services.²¹ We concur with this determination. Next, we consider whether Westchester’s petition satisfies the specific showing requirements mandated by Section 337(c) of the Act.

7. *No other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use.* In the *2004 Order*, WTB/PSCID concurred with Westchester’s contention, based on the record in that proceeding, that no other public safety spectrum was immediately available to satisfy the requested public safety service use.²² In the *2005 Order*, WTB/PSCID reaffirmed that Westchester satisfied this criterion of Section 337(c) of the Act.²³ In the instant proceeding, Westchester asserts that nothing has changed to negate the Commission’s previous findings.²⁴ Based on the record before us and from the previous Westchester proceedings, and Westchester’s continued assertions regarding the availability of public safety frequencies today, we concur and find that no other public safety spectrum is immediately available to satisfy the requested public safety service use.

¹⁸ 47 U.S.C. § 337(c).

¹⁹ See 47 U.S.C. § 337(f).

²⁰ *Id.*

²¹ *2004 Order*, 19 FCC Rcd at 23192 ¶ 7.

²² *2004 Order*, 19 FCC Rcd at 23192-3 ¶ 8.

²³ *2005 Order*, 20 FCC Rcd at 18854 ¶ 6.

²⁴ Waiver Request at 7.

8. *The requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations.* Part 22 licensees operating on frequencies in the 470-512 MHz band have an authorized bandwidth of 20 kHz, with a channel spacing of 25 kHz.²⁵ The instant proposal is similar to the *Westchester Orders* to the extent that Westchester now seeks to use 12.5 kHz bandwidth equipment in the portion of the 470-512 MHz designated under Part 22 for 20 kHz bandwidth operation. Unlike the circumstances in the *Westchester Orders*, however, Westchester is proposing to operate adjacent to a Part 22 licensee in the New York urbanized area. Arch Wireless License Company, LLC (Arch Wireless) operates with a center frequency of 470.2125 MHz from a transmitter in Mahopac, New York on Station KEC937.²⁶ We conducted our own analysis and found that Westchester's proposed operation on frequency 470.2000 MHz would create bandwidth overlap to the protected authorized bandwidth Arch Wireless. However, Westchester has obtained a written letter of concurrence from Arch Wireless indicating its consent to Westchester's proposed operations.²⁷

9. Frequency 473.2000 MHz is co-channel with County of Somerset, New Jersey's (Somerset) mobile operations on Stations WQBL360 and WQBL367 and Syosset Fire District's mobile operations on Station WPYJ816. We note that the three entities already operate mobile units co-channel to each other on frequency 479.2375 MHz without reports of interference. Syosset Fire District has a pending application and waiver request seeking, *inter alia*, to delete frequency 473.2000 MHz from its license so that Westchester may use the frequency.²⁸ In the record for the 2005 waiver, Westchester conducted an analysis to show that its mobile operation would not cause harmful interference to Somerset.²⁹ We conducted our own analysis and found that despite the higher power level proposed here, Westchester's existing analysis of mobile operation still holds due to the terrain obstructions between the two counties.

10. Based on the forgoing analysis, we find that no other co-channel, incumbent public safety entities would be affected by grant of the application. Our analysis also finds that Westchester's proposal avoids bandwidth overlap with adjacent channel public safety entities because of the proposed 11.25 kHz narrowband operation. Accordingly, we conclude that the requested use of frequency pair 470/473.2000 MHz is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations.

11. *The use of the unassigned frequencies for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which an application is made.* In the previous *Westchester Orders*, we found that Westchester's request for UHF frequencies satisfied this statutory requirement, and we also do so here.³⁰ We note that the frequencies in

²⁵ See 47 C.F.R. § 22.621.

²⁶ See license for call sign KEC937. This station's center frequency is separated by 12.5 kHz from Westchester's requested frequency 470.2000 MHz.

²⁷ See File No. 0003004004, attached Letter from Richard D. Dewey, Vice President, Engineering Services, Arch Wireless License Co., LLC, a subsidiary of USA Mobility, Inc., to Thomas Raffaelli, County of Westchester (dated Oct. 15, 2007).

²⁸ See File No. 0003065700.

²⁹ See File No. 0002107869, attached Analysis of the Potential for Co-Channel Interference From Westchester County, NY into Somerset County, NJ by Vogel Consulting Group, Inc., March, 2005.

³⁰ See 2004 Order, 19 FCC Rcd at 23194 ¶ 10; 2005 Order, 20 FCC Rcd at 18855 ¶ 8.

the instant application are in the same band, 470-512 MHz, as the frequencies previously authorized to Westchester, which are currently in use to provide public safety services.³¹ Accordingly, we find that public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area.

12. *The unassigned frequencies have been allocated for its present use not less than two years.* The Commission allocated these frequencies for non-public safety use in 1994.³² Thus, these frequencies have been allocated for their present use for more than two years. We therefore conclude that Westchester satisfies this prong of our analysis.

13. *Granting the applications is consistent with the public interest.* In the *Westchester Orders*, we found that granting Westchester's request for a total of six UHF frequency pairs was in the public interest.³³ We find that circumstances previously found to warrant grant of waiver relief continue to be present and support grant of the additional requested waiver relief. In this regard, we find that a grant of the instant application will provide Westchester with the channel capacity that is needed for its public safety communications system to better meet the communication demands of its public safety agencies. We also find it significant that granting the instant request would promote interoperability within the county and with neighboring agencies.³⁴ We therefore conclude that granting the application is consistent with the public interest.

IV. CONCLUSION

14. We conclude on the record before us that Westchester's waiver request satisfies the criteria set forth under Section 337(c) of the Act, and that its application to add frequencies to its public safety communications system should be granted. We therefore grant the request for waiver.³⁵

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), the request for waiver associated with the captioned application filed by the County of Westchester, New York, on April 24, 2007, IS GRANTED, and File No. 0003004004 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

³¹ See File No. 0002470725 (required notification for Station WQBR539 reflecting a construction date of Nov. 30, 2005; filed Feb. 2, 2006).

³² See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket 92-115, 9 FCC Rcd 6513 (1994).

³³ See *2004 Order*, 19 FCC Rcd at 23194 ¶ 12, *2005 Order*, 20 FCC Rcd at 18855-6 ¶ 10.

³⁴ Waiver Request at 2.

³⁵ In view of our conclusion that a waiver is warranted under Section 337(c) of the Act, we need not address whether Westchester's waiver request should be granted under Section 1.925(b)(3) of the rules.

16. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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